IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5182 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIRABEN WD/O. SOMABHAI H. PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5182 of 2004

MR NEHAL R JOSHI for Petitioner No. 1-2

MR NAGESH SOOD, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/08/2004

ORAL JUDGEMENT

Rule. Shri Nagesh Sood, Ld. AGP waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing

today.

2. In this petition under Articles 226/227 of the Constitution, the petitioners have prayed for an appropriate writ, direction or order quashing and setting aside the order passed by the Collector, Mehsana dated 4.2.2004 passed in Case No.LND/NA/SR/145 of 2004. It is borne out from the record that against the impugned order dated 4.2.2004, the petitioners have already preferred an Revision Application before the State Government i.e. Secretary (Appeals), Revenue Department, State of Gujarat and the same is pending before the Secretary (Appeals) for final disposal. It is the case of the petitioners that they moved an application for stay before the Secretary (Appeals). However, as no order was passed by the Learned Secretary (Appeals) on the stay application, the petitioners had approached this Court by way of present Special Civil Application challenging the order passed by the Collector, Mehsana dated 4.2.2004.

3. In view of the fact that the order dated 4.2.2004 passed by the Collector, Mehsana which is challenged in the present Special Civil Application is already challenged by the petitioners before the Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad by way of revision application, the petition challenging the order passed by the Collector, Mehsana dated 4.2.2004 is not entertained.

4. Shri Sud, Ld. AGP appearing on behalf of the respondent State has produced the affidavit in reply dealing with the petition on merits. However, in view of the fact that the revision application is pending before the State Government, I am not going into the merits of the case.

5. While issuing notice in the present petition, this Court has already granted adinterim relief in terms of Para 13(B) which is continued till date. In that view of the matter, the Secretary (Appeals) is directed to decide and dispose of the Revision Application preferred by the petitioners challenging the order passed by the Collector, Mehsana dated 4.2.2004 in Case No.LND/NA/SR/145 of 2004 within a period of four (4) months from the date of receipt of this order and until then the adinterim relief granted by this Court is permitted to be continued. It is made clear that this Court has not gone into the merits of the case at all and the Learned Secretary (Appeals) is directed to decide and dispose of the Revision Application on merits and in accordance with law, without in any way being influenced

by the fact that this Court has continued the adinterim relief granted earlier. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)
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